

Attorney Docket No.: DEX-0245
Inventors: Recipon et al.
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REMARKS

Claims 1-17 are pending in the instant application. Claims 1-17 have been subjected to a Restriction Requirement as follows:

Group I, claims 1-5 and 7-9, drawn to an isolated nucleic acid molecule, a vector comprising said molecule, a host cell comprising said vector, and a method of producing a polypeptide using said molecule, classified in class 536, subclass 23.1, class 435, subclasses 69.1, 320.1, and 325, for example;

Group II, claim 6, drawn to a method for determining the presence of a lung specific nucleic acid, classified in class 425, subclass 6, for example;

Group III, claims 10 and 11, drawn to an isolated polypeptide, classified in class 530, subclass 350, for example;

Group IV, claim 12, drawn to an antibody, classified in class 530, subclass 387.1, for example;

Group V, claim 13, drawn to a method for determining the presence of a lung specific protein, classified in class 435, subclass 7.1, for example;

Group VI, claim 14 (in part), drawn to a method for diagnosing and monitoring the presence and metastases of lung

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cancer using a nucleic acid, classified in class 435, subclass 4, for example;

Group VII, claim 14 (in part), drawn to a method for diagnosing and monitoring the presence and metastases of lung cancer using a polypeptide, classified in class 424, subclass 277.1, for example;

Group VIII, claim 15 (in part), drawn to a kit comprising a means for determining the presence of a nucleic acid molecule, classification undeterminable, classification determinable on means;

Group IX, claim 15 (in part), drawn to a kit comprising a means for determining the presence of a polypeptide, classified undeterminable, classification determinable on means;

Group X, claim 16, drawn to a method of treating a patient with lung cancer by administering an antibody, classified in class 424, subclass 130.1, for example;

Group XI, claim 17 (in part), drawn to a vaccine comprising a polypeptide, classified in class 514, subclass 2, for example; and

Group XII, claim 17 (in part) drawn to a vaccine comprising a polynucleotide, classified in class 514, subclass 44, for example.

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The Examiner suggests that the claims of Groups I-XII are drawn to a multitude of nucleic acids, polypeptides, antibodies thereto and methods which use these compounds which are independent and distinct because no common structural or functional properties are shared.

Further, upon election of Groups I-XII, Applicants are additional required to elect a single nucleic acid, polypeptide or antibody.

Applicants respectfully traverse this Restriction Requirement.

MPEP §803 provides two criteria which must be met for a restriction requirement to be proper. The first is that the inventions be independent or distinct. The second is that there would be a serious burden on the Examiner if the restriction is not required. A search of prior art relating to an elected nucleic acid, polypeptide or antibody would also reveal any references teaching uses for the nucleic acid, polypeptide or antibody. Accordingly, Applicants believe that searching of all the claims, at least when limited to elected nucleic acids or polypeptides is overlapping and would not place an undue burden on the Examiner if the Restriction is not made.

Thus, since this Restriction Requirement does not meet both

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criteria as set forth in MPEP § 803 to be proper, reconsideration and withdrawal of this Restriction Requirement is respectfully requested.

In addition, with respect to the election of a single sequence, MPEP § 803.04 clearly states that a reasonable number of nucleotide sequences, normally ten sequences, can be claimed in a single application. Accordingly, withdrawal of this sequence election requirement and reconsideration to include a more reasonable number of at least 10 sequences in accordance with MPEP § 803.04 is also respectfully requested.

In an earnest effort to be completely responsive, however, Applicants elect Group I, claims 1-5 and 7-8, with respect to SEQ ID NO:8 encoding SEQ ID NO: 87, with traverse.

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record.

Respectfully submitted,

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